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No. 80-1562

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

MARINE BANK
Petitioner

v.

SAMUEL WEAVER and ALICE WEAVER
Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI
FILED MARCH 13, 1981
CERTIORARI GRANTED JUNE 1, 1981

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DOCKET ENTRIES

Samuel Weaver and Alice Weaver v. Marine Bank

Date 1979	Proceedings
May 4	COMPLAINT filed at C.A. 76-66
May 4	Summons issued.
May 7	USM-285 returned served 5-7-79 on Marine Bank.
May 17	Notice of serving interrogatories 1-4 on or about 5-17-79 filed by Pltf.
June 6	ANSWER filed.
June 11	Notice of Depositions of Robert Santom and John Daggett on 7-3-79 at 10:00 a.m.
June 18	Pltfs. Request for production of Documents.
July 5	Pltf's. interrogatories to the Deft, filed with answers.
July 9	Notice of Depositions of Samuel Weaver & Alice Weaver on 8/10/79 filed by Deft.
July 30	Depositions of John Daggett & Robert Santom taken on 7/3/79 at 10:00 a.m. before Evelyn Flowers, Crt Rptr.
Aug. 15	Notice of Pltf's. service of supplemental interrogatory No. 5 on Deft.
Aug. 16	Notice of taking depositions of Will Schulte and C. Conrad Monroe on 8/30/79 at 1:30 p.m.
Aug. 20	Depositions of Ezra M. (Samuel) Weaver and Alice F. Weaver taken on 8/10/79 at 9 a.m. filed by Mary Hines, Crt. Rept.
Aug. 29	Supplemental Interrog's. to Marine Bank filed with Answers.
Sep. 11	Deposition of Wilbur Schuldt & C. Conrad Monroe taken 9/6/79, filed by Mary Hines, Crt. Rept.
Sep. 17	Notice invoking Local Rule 5(II).

Oct. 3	Pltf's. amended request for production of documents.
Nov. 30	Notice scheduling pretrial conf. for 12/20/79 at 3:30 p.m. Erie.
Dec. 14	Motion to dismiss the Cmplt or for summary judgment filed by Deft.
Dec. 14	Affidavits of Robert E. Santom & John J. Daggett filed.
Dec. 18	Pltf's. answer to Deft's. motion for summary judgment filed.
Dec. 18	Pltf's. pretrial narrative statement filed.
Dec. 19	Pretrial narrative statement of Marine Bank filed.
Dec. 20	Pretrial Conf. held before Willson, J., Gene Zurawsky, Crt. Rept., Memo filed.

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Jan. 11	Memorandum & Judgment Order granting deft's. motion for summary judgment ent. by Willson, J. Defendant's motion for summary judgment is granted and judgment is directed to be entered for deft. Marine Bank and against the pltfs, and this case is dismissed.
Jan. 11	Judgment on decision of the Court filed by the Clerk entering judgment in favor of deft. and against the plaintiffs Samuel Weaver and Alice Weaver.
Jan. 11	Pursuant to Memorandum & order ent. by the Court & judgment on decision of the Court filed by the Clerk, the within case is hereby dismissed. GILBERT W. CONLEY, CLERK.
Jan. 11	Card notices mailed.
Jan. 25	Pltf's motion to amend cmplt filed.
Jan. 28	Order ent. Willson, J. correcting error with respect to Appendix "A" attached to memorandum & Order ent.

	1/11/80. Appendix "A" is deleted and set aside; and attached hereto and made a part of the decision is deft's brief marked Appendix "B".
Jan. 31	Order ent. Willson, J. DENYING Pltf's motion to amend cmplt.
Feb. 5	Notice of appeal filed by Pltfs.
Feb. 6	Certified copy of notice of appeal, docket, and letter sent to Mr. Quinn, Crt. of Appeals. Notice of appeal & letters sent to all counsel of record.
Feb. 25	Case docketed in United Court of Appeals for the Third Circuit at No. 80-1274; record on appeal filed.
Sept. 18	Argument before U.S. Court of Appeals for the Third Circuit.
Dec. 15	Opinion and judgment reversing judgment of the District Court.

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Jan. 26	Order ent. John J. Gibbons, Circuit Judge, ordering that the petition for rehearing before the original panel is denied.
Jan. 26	Order ent. John J. Gibbons, Judge, ordering that the pet. for rehearing by the court in banc is denied. Judges Weis and Garth would grant rehearing.
Mar. 13	Petition for a writ of certiorari docketed in Supreme Court of the United States as No. 80-1562.
June 1	Petition for a writ of certiorari granted.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SAMUEL WEAVER and

ALICE WEAVER

vs. Civil Action No. 79-66 Erie

MARINE BANK

COMPLAINT

AND NOW, come the plaintiffs, Samuel Weaver and Alice Weaver, by their counsel, Andrew J. Conner, Esquire, of DUNN & CONNER, of 1111 G. Daniel Baldwin Building, Erie, Pennsylvania, 16501, and bring this Complaint against the above-named defendant, alleging as follows:

1. The plaintiffs, Samuel Weaver and Alice Weaver, are individuals, having a place of residence at R.D. #4, Union City, Erie County, Pennsylvania, 16438.

2. The Marine Bank is a bank organized under the banking laws of the Commonwealth of Pennsylvania, having its principal place of business at 901 State Street, Erie, Pennsylvania, 16501.

3. Jurisdiction for the claims set forth in this Complaint, in this Court, is premised upon the Securities and Exchange Act, 15 U.S.C.A. 78(a)(a).

4. Telephone calls and the United States Mail were used by Marine Bank in soliciting and inducing the sale of the security involved in this claim and the consummation of the sale had an impact on the bank collections system to the extent that Interstate Commerce was affected and involved in these transactions.

COUNT ONE

5. This Count is brought pursuant to the Securities and Exchange Act, 15 U.S.C.A. 78 (j)(b), 17 C.F.R. 240.10B-5.

6. It is alleged and asserted that on or about March 17, 1978, the plaintiffs purchased a "security" in the Columbus Packing Company, as the term "security" is defined under the Securities and Exchange Acts of 1933 and 1934 and specifically within the definition of "security" as that

term is defined in 15 U.S.C.A. 78 (c)(a)(10).

7. It is alleged and asserted that on or about March 17, 1978, the Weavers were the purchasers of a security in a proprietorship known as Raymond Piccirillo, Jr., d/b/a Columbus Packing Company, hereinafter referred to as "Columbus Packing Company", which allowed the Weavers to receive 50% of the adjusted net profits of the Columbus Packing Company at the conclusion of each fiscal year. A true and correct copy of the document confirming the Weavers' acquisition of this security is attached to this Complaint and designated Complaint Exhibit "A".

8. It is alleged and asserted that on and prior to March 17, 1978, agents and employees of the Marine Bank, including, but not limited to, Robert Santom and John Daggett, acting within the scope of authority given to them by the bank, solicited and induced the Weavers to purchase the aforementioned Columbus Packing Company security, in consideration for which the Weavers hypothecated a $50,000.00 certificate of deposit as collateral security for a loan of $50,000.00 by Marine Bank to Columbus Packing Company and executed an agreement of guaranty limited to $50,000.00 guaranteeing the repayment of Columbus Packing Company's obligations of Marine Bank. True and correct copies of the hypothecation and guaranty agreements referred to in this paragraph are attached to this Complaint and designated Complaint Exhibit "B" and Complaint Exhibit "C", respectively.

9. It is alleged and asserted that agents and employees of Marine Bank on a number of occasions went to the Weavers' home in order to persuade them to invest in Columbus Packing Company.

10. It is alleged and asserted that at all material times prior to March 17, 1978, the agents and employees of Marine Bank responsible for soliciting and inducing the Weavers' purchase of the Columbus Packing Company security in exchange for the pledge of the $50,000.00 certificate of deposit and the $50,000.00 guaranty, knew that the Columbus Packing Company was in serious financial problems. It is alleged and asserted that these agents knew at least the following:

(a) That Columbus Packing Company was indebted to the Marine Bank in an amount in excess of $30,000.00 on notes which were past due;

(b) That Columbus Packing Company had issued checks upon checking accounts at the Marine Bank for which there were not sufficient funds to cover;

(c) That the Internal Revenue Service had imposed liens upon the Columbus Packing Company and its principals, for past taxes;

(d) That there were numerous creditors, who had claims against Columbus Packing Company for material and / or services rendered on and prior to March of 1978.

11. It is alleged and asserted that on and prior to March 17, 1978, and for the purpose of soliciting and inducing the sale of the security to the Weavers, described above, agents for the Marine Bank, acting within the scope of authority given to them by the bank, employed manipulative and deceptive devices in contravention of 15 U.S.C.A. 78(j) and the rules and regulations of the Securities and Exchange Commission to induce the Weavers to purchase the security identified above.

12. It is alleged and asserted that the manipulative and deceptive devices and practices identified in the previous paragraphs of this Complaint included, but are not limited to, the following:

(a) The failure of Marine Bank to advise the Weavers of the amount of the notes owed by Columbus Packing Company to the Marine Bank;

(b) The failure to disclose that the notes, identified in the previous sub-section of this paragraph at Marine Bank were past due;

(c) That the Columbus Packing Company had substantially overdrawn its checking account;

(d) That the Internal Revenue Service was owed substantial money and had filed, or threatened to file, liens against the Columbus Packing Company.

(e) That there were numerous other creditors of Columbus Packing Company, who had claims against the assets of Columbus Packing Company.

13. Contrary to the provisions of 15 U.S.C.A. 78(j) and the rules and regulations of the Securities Commission, the Marine Bank agents and employees responsible for soliciting and inducing the Weavers' purchase of the security identified in the previous paragraphs of this security identified in the previous paragraphs of this Complaint represented to the Weavers the following:

(a) That the Columbus Packing Company was solvent;

(b) That Marine Bank had sufficient and substantial collateral within its control to protect the Weavers from any loss resulting from their execution of the guaranty and the pledge of the certificate of

deposit, identified above;

(c) That the $50,000.00 proceeds from the loan to Columbus Packing Company secured by the Weavers' $50,000.00 certificate of deposit would be used by Columbus Packing Company as "working capital" and not for the purpose of paying creditors, who then had claims against Columbus Packing Company.

14. It is alleged and asserted that in fact the following was true and correct:

(a) The Columbus Packing Company was not solvent;

(b) That there was not sufficient collateral within the control of the Marine Bank to protect the Weavers in the event Columbus Packing Company was liquidated;

(c) That most of the funds generated by the loan were intended, at all times, to be used to pay off creditors of Columbus Packing Company, including, but not limited to, the notes of the Marine Bank, the indebtedness created by the overdrawn checking account and the liens of the Internal Revenue Service, all of which were identified above, and that the funds were actually so applied.

15. It is alleged and asserted that the Weavers purchased the security in the Columbus Packing Company, identified above, in reliance upon the representations made by Marine Bank with respect to the condition of Columbus Packing Company and the use of the funds, described above.

16. It is alleged and asserted that on or about July 21, 1978, Columbus Packing Company filed a Petition for Bankruptcy in the United States District Court for the Western District of Pennsylvania, and was adjudicated a bankrupt.

17. It is alleged and asserted that Marine Bank was listed as a creditor in the amount of $74,000.00 on the bankruptcy schedules of Columbus Packing Company.

18. It is alleged and asserted that to date Marine Bank has received $5,076.96 from the bankruptcy trustees toward its claim against Columbus Packing Company, as the result of the sale of bankrupt's realty which was subjected to a judgment held by Marine Bank and that Marine Bank will receive no further distributions from the bankruptcy Court because:

(a) Its security interest in Columbus Packing Company's personalty was unperfected at the time of the filing of the bankruptcy petition;

(b) It has not filed a proof of claim and the time limit for same has

expired;

(c) Priority claims and costs of administration will, in all probability, exchaust the assets of the bankrupt.

19. It is alleged and asserted that the current balance of principal and interest on the Columbus Packing Company's obligations to Marine Bank exceeds $66,000.00.

20. It is alleged and asserted that Columbus Packing Company's co-maker on the $50,000.00 note, Mr. and Mrs. Raymond Piccirillo, Sr., have a net worth of not more than $35,000.00 and that a deficiency balance on Columbus Packing Company's obligations to Marine Bank will remain following the exhaustion of the co-maker's assets.

21. It is alleged and asserted that Marine Bank will apply the Weavers' hypothecated $50,000.00 certificate of deposit to the extent necessary to satisfy any deficiency balance remaining on the Columbus Packing Company obligations.

22. It is alleged and asserted that the Weavers have, on more than one occasion, requested Marine Bank to rescind the transaction set out in the preceding paragraphs so as to void the hypothecation and guaranty agreements that they have executed and that Marine Bank has refused to consent to a rescission.

23. Plaintiffs claim interest, costs and counsel fees as the law may provide.

WHEREFORE, plaintiffs request that the above described securities transaction be rescinded or that damages in an amount in excess of $10,000.00 with interest and costs and counsel fees be awarded in their favor.

COUNT TWO

24. Plaintiffs incorporate into this Count all of the preceding paragraphs of this Complaint, as if they had been set forth in full.

25. Jurisdiction for the claim set forth in this Count, in this Court, is pendent upon the Court having jurisdiction over the matters set forth in Count One.

26. This Count is brought pursuant to the Pennsylvania Securities Act of 1972, 70 P.S. 31, et al.

27. The security identified in the previous paragraphs of this Complaint, as evidenced by Complaint Exhibit "A", constitutes a "security" under the Pennsylvania Securities Act, as the term "security" is defined by 70 P.S. 1-102(t).

28. That in the context of the securities transaction set out in Count One, Columbus Packing Company is an "issuer" as the term "issuer" is defined in 70 P.S. 1-102(1).

29. That in the context of the securities transaction set out in Count One, the agents and employees of Marine Bank who, acting within the scope of their authority were responsible for persuading the Weavers to invest in Columbus Packing Company, were "agents" as the term "agent" is defined in 70 P.S. 1-102(c).

30. It is alleged and asserted that the agents and employees of Marine Bank involved in this securities transaction have violated the securities registration requirements of the Pennsylvania Securities Act as set out in 70 P.S. 1-201 to 1-209 and that the Weavers are entitled to a rescission under 70 P.S. 1-502.

31. It is alleged and asserted that the agents and employees of Marine Bank involved in this securities transaction are not registered as agents as required by the Pennsylvania Securities Act, 70 P.S. 1-301, and that the Weavers are entitled to damages as set out in 70 P.S. 1-501(a).

32. Plaintiffs claim interest, costs of suit and counsel fees incurred in bringing the within claim.

WHEREFORE, plaintiffs demand a rescission of the above described securities transaction or judgment for damages in an amount in excess of $10,000.00 with interest and costs to be awarded in their favor.

COUNT THREE

33. Plaintiffs incorporate into this Count all of the preceding paragraphs of this Complaint, as if they had been set forth in full.

34. Jurisdiction for the claim set forth in this Count, in this Court, is pendent upon the Court having jurisdiction over the matters set forth in Count One.

35. It is alleged and asserted that the preceding paragraphs set out a cause of action against Marine Bank under the common law of fraud and misrepresentation.

36. Plaintiffs claim interest, costs of suit and counsel fees incurred in bringing the within claim.

WHEREFORE, plaintiffs demand a rescission of the above described securities transaction or judgment for damages in amount in excess of $10,000.00 with interest and costs to be awarded in their favor.

JURY TRIAL DEMANDED

Respectfully submitted,
DUNN & CONNER

By: /s/
Andrew J. Conner, Esquire
Attorneys for plaintiffs,
Samuel Weaver and Alice Weaver
1111 G. Daniel Baldwin Building
Erie, Pennsylvania 16501
A.C. 814-453-6011

Dated: May 4, 1979

AGREEMENT

THIS AGREEMENT made this day of , 1978, between RAYMOND A. PICCIRILLO, JR., and BARBARA J. PICCIRILLO, his wife, t/d/b/a COLUMBUS PACKING COMPANY, (hereinafter "Piccirillo"),

AND

SAMUEL WEAVER and ALICE F. WEAVER, his wife, (hereinafter "Weaver").

WHEREAS, Piccirillo is about to enter into an agreement with Marine Bank for a loan of $50,000.00; and,

WHEREAS, Weaver has agreed, for valuable consideration, to act as a co-obligor on said indebtedness; and,

WHEREAS, it is desirable to set forth the terms under which Weaver has agreed to act as co-obligor.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. Weaver agrees to become co-obligor of a loan to be extended by Marine Bank to Piccirillo in the principal amount of $50,000.00, said loan to be closed during March, 1978.

2. While Piccirillo is operating and in possession of the Columbus Packing Company premises and until said $50,000.00 loan is paid in full by Piccirillo, Weaver shall have the following rights:

A. To use the barn and pastures located on the Columbus Packing Company premises in Columbus Township, Warren County, Pennsylvania, at the discretion of Piccirillo.

B. To receive ~~thirty-five (35)~~ 50% RAP & M.W. percent of the "adjusted net profits" of Columbus Packing Company at the conclusion of each fiscal year. The computation of the "adjusted net profits" at the conclusion of each fiscal year shall be based on the percentage of days in the immediately preceding fiscal year during which Weaver was a co-obligor on the aforementioned indebtedness of Piccirillo. By way of example only, if net profits of Columbus Packing Company for a given fiscal year ending December 31st amount to $50,000.00 and Piccirillo's loan obligation to Marine was paid off on September 30 of that fiscal year, Weaver's entitlement would be equal to percent of 75

percent (percentage of days in fiscal year during which co-obligation in effect) of the fiscal year's net profits. The sum arrived at is the "adjusted net profits".

C. Additionally, to receive from Piccirillo the sum of $100.00 per month until such time as the obligation which is the subject of Weaver's co-signature is paid in full.

3. While Piccirillo is operating and in possession of the Columbus Packing Company premises and until the said $50,000.00 loan is repaid in full by him, Piccirillo shall have the obligation to forebear from causing Columbus Packing Company to borrow additional money without prior consultation with and approval by Weaver.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

/s/ _____ *(SEAL)*
Raymond A. Piccirillo, Jr.

/s/ _____ *(SEAL)*
Barbara J. Piccirillo

/s/ _____ *(SEAL)*
Samuel Weaver

/s/ _____ *(SEAL)*
Alice F. Weaver

[Exhibit "B" of the Complaint, the hypothecation agreement dated March 17, 1978, is reproduced at page JA-24 of this appendix.]

[Exhibit "C" of the Complaint, the guaranty dated March 17, 1978, is reproduced at page JA-26 of this appendix.]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

[Caption omitted in printing]

ANSWER TO COMPLAINT

AND NOW comes the defendant, Marine Bank, by its counsel, McClure, Dart, Miller, Kelleher & White, of 501 Marine Bank Building, Erie, Pennsylvania 16501, and files the following Answer:

1. Admitted.
2. Admitted.
3. Denied and as further answer, defendant alleges that there exists no statute cited at 15 U.S.C.A. 78(a)(a).
4. Denied.

COUNT ONE

5. Admitted.
6. Denied.
7. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 7, and as a further answer, defendant alleges that neither it nor any of its agents, servants or employees are familiar with or have had any connection with the document attached to plaintiffs' Complaint as Exhibit "A"; however, on its face, said document purports to be contingent upon the Weavers becoming a co-obligor on a note to the Marine Bank, which contingency never occurred.
8. It is denied that on or prior to March 17, 1978, agents and employees of the Marine Bank, including, but not limited to, Robert Santom and John Daggett, acting within the scope of authority given to them by the bank, solicited and induced the Weavers to purchase the alleged Columbus Packing security. It is admitted that the Weavers did hypothecate to Marine Bank a $50,000.00 certificate of deposit as collateral for a consolidated loan by Marine Bank to Columbus Packing, and it is further admitted that the Weavers executed an agreement of guaranty limited to $50,000.00, guaranteeing the repayment of Columbus Packing Company's obligation to Marine Bank. It is admitted that plaintiffs' Exhibits "B" and "C" are true and correct copies of the hypothecation and guaranty agreements.
9. Denied.

10. It is admitted that prior to March 17, 1978, the agents and employees of Marine Bank knew that the Columbus Packing Company was in serious financial difficulty. It is denied that any agent or employee of Marine Bank solicited or induced the purchase of any alleged Columbus Packing security. In specific answer to each subparagraph, the defendant asserts the following:

(a) It is admitted that the Marine Bank knew the Columbus Packing Company was indebted to it in an amount in excess of $30,000.00 on notes which were past due;

(b) It is admitted that Columbus Packing Company had issued checks upon checking accounts at Marine Bank for which there were not sufficient funds to cover;

(c) It is denied that the agents of the Marine Bank knew that the Internal Revenue Service had imposed liens upon Columbus Packing Company and its principals for past due taxes;

(d) It is admitted that there were numerous creditors who had claims against Columbus Packing Company for material and/or services rendered on or prior to March of 1978 and that the agents of Marine Bank knew of same.

11. Denied.

12. (a) It is denied that the Marine Bank failed to advise the Weavers of the amount of the notes owed by Columbus Packing Company to Marine Bank, and in further answer, the defendant alleges that the Weavers were so advised of the amount of said notes;

(b) It is denied that the agents of the Marine Bank failed to disclose that the notes payable to the Marine Bank were past due, and in further answer, defendant alleges that the Weavers were so advised;

(c) It is admitted that the Columbus Packing Company has overdrawn its checking account, and in further answer, defendant alleges that the Weavers were so advised;

(d) It is admitted that the Weavers were not advised by the bank of the Internal Revenue Service liens against Columbus Packing Company, and in further answer, defendant alleges that the bank did not know of said liens;

(e) It is denied that there were numerous other creditors of Columbus Packing Company who had claims against the assets of Columbus Packing Company, and in further answer, defendant alleges that there was only one other creditor to the best of its knowledge which had a claim against the assets of Columbus Packing Company, said

creditor being Penn Bank, which had a lien on a car or truck, and that the Weavers were so advised of said lien.

13. It is denied that the provisions of 15 U.S.C.A. 78(j) and the rules and regulations of the Securities Commission were violated or that the Marine Bank solicited or induced the Weavers to purchase any alleged security, and in further answer, the defendant alleges as follows:

(a) It is denied that the bank, its agents or employees, represented to the Weavers that the Columbus Packing Company was solvent;

(b) It is denied that the agents or employees of the bank represented to the Weavers that there was sufficient and substantial collateral to protect the Weavers from any loss, and in further answer, the bank alleges that were that the case, the bank would not have advised Mr. Piccirillo of the need for additional security;

(c) It is denied that any agent or employee of the bank represented to the Weavers that the loan to Columbus Packing Company would be working capital and not for the purpose of paying creditors who then had claims against Columbus Packing Company, and in further answer, the bank alleges that its agents or employees reviewed with the Weavers a complete breakdown of the distribution of the loan.

14. (a) Admitted.

(b) Denied.

(c) Admitted except for the allegation that the funds generated by the loan would be used to pay the Internal Revenue Service, which is denied.

15. Denied.

16. Admitted.

17. Admitted.

18. It is admitted that the Marine Bank received money from the bankruptcy trustees toward its claim against Columbus Packing Company, said amounts being $5,076.91, and in further answer, defendant alleges;

(a) Denied that the bank's security interest in Columbus Packing's personalty was unperfected at the time of the filing of the bankruptcy petition, and in further answer thereto, the defendant alleges that its security interest was perfected, but in fact was partially preferential due to the date of the filing of the date of the bankruptcy petition;

(b) It is admitted that the bank has not filed a proof of claim and the time limit for same has expired;

(c) Defendant is without knowledge or information sufficient to

form a belief as to the truth of whether priority claims and costs of administration will exhaust the assets of the bankrupt, there being no distribution order at this point form the bankruptcy court, and to the best of the knowledge of Marine Bank, there has been no final meeting of creditors in said bankruptcy.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

23. Denied.

WHEREFORE, Defendant requests that the Complaint be dismissed.

COUNT TWO

24. Defendant incorporates into this answer all of the preceding answers to the complaint, as if they had been set forth in full.

25. Admitted.

26. Denied that the Pennsylvania Securities Act of 1972 is found at 70 P.S. 31, it being alleged that the Pennsylvania Securities Act of 1972 is found at 70 P.S. §1-101.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. It is admitted that the agents and employees of Marine Bank involved in this transaction are not registered; it is denied that this is a securities transaction or that said registration is required or that the Weavers are entitled to damages as alleged.

WHEREFORE, Defendant requests that the Complaint be dismissed.

COUNT THREE

33. Defendant incorporates into this count all of the preceding answers to the complaint as if they had been set forth in full.

34. Admitted.

35. Denied.

36. Denied.

WHEREFORE, Defendant requests that the Complaint be dismissed.

AFFIRMATIVE DEFENSES

37. Defendant, Marine Bank, was not involved in or a party to the agreement attached to plaintiff's Complaint as Exhibit "A"; nor was said document ever seen by or reviewed with the agents or employees of the Marine Bank at any relevant time.

38. The Court lacks subject matter jurisdiction because the document attached to plaintiff's Complaint as Exhibit "A" is not a "security" as defined under the Exchange Act of 1934 set forth at 15 U.S.C.A. 78(c)(a)(10) for, but not limited to, the following reasons:

(a) Said document purports on its face to be contingent upon the Weavers becoming co-obligors on a note to Marine Bank (said contingency never occurred);

(b) Said document purports on its face to establish a joint venture or a partnership and is not a "security";

(c) The proceeds of the loan to Columbus Packing were used, as alleged in plaintiffs' Complaint, to pay off business debts, and as such, defendant's involvement in same, did not constitute the purchase of an investment contract.

39. This Court lacks subject matter jurisdiction because there was no "sale or exchange" of a security as set forth in the Act.

40. This Court lacks subject matter jurisdiction because the pledge of a certificate of deposit hypothecated in exchange for a loan is not encompassed within Section 78 of the Securities Exchange Act of 1934 and does not constitute a "security".

41. This Court lacks subject matter jurisdiction over Counts Two and Three of plaintiffs' Complaint because same are pendent to the claim set forth in Count One.

Respectfully submitted,

McCLURE, DART, MILLER,
KELLEHER & WHITE

By /s/
Daniel L. R. Miller, Esq. and

/s/

Christine H. McClure, Esq.
Attorneys for defendant,
Marine Bank
501 Marine Bank Building
Erie, PA 16501
(814) 453-3681

Dated: June 6, 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

[Caption omitted in printing]

MOTION TO DISMISS THE COMPLAINT OR FOR SUMMARY JUDGMENT

Defendant moves to dismiss the complaint or, in the alternative, for summary judgment upon the ground that there is no genuine issue of material fact and that defendants are entitled to judgment as a matter of law in that:

1. The Court is without jurisdiction over the subject matter of the complaint and in support thereof the Court is referred to the affidavit of Robert E. Santom and John J. Daggett, the exhibits attached thereto, the depositions of Ezra Weaver and Alice Weaver, and the Brief in Support of this Motion, all attached hereto and made a part hereof.

/s/
Daniel L. R. Miller, Esq.

/s/
Christine Hall McClure, Esq.

McCLURE, DART, MILLER,
KELLEHER & WHITE
501 Marine Bank Building
Erie, Pennsylvania 16501
(814) 453-3681

Attorneys for Marine Bank

[Brief in support of motion omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

[Caption omitted in printing]

STATE OF PENNSYLVANIA

SS:

COUNTY OF ERIE

Robert E. Santom, being first duly sworn, deposes and says:

I am Robert E. Santom, Vice-President and Manager, Corry area, Marine Bank, and have personal knowledge of the facts herein set forth.

This Affidavit is submitted in support of the defendant's Motion for Summary Judgment herein, for the purpose of showing that there is in this action no genuine issue as to any material fact, and that defendant is entitled to judgment as a matter of law.

1. I was the Manager of the Corry office of Marine Bank on March 17, 1978, which is the time and place of the loan transaction between Marine Bank and Raymond A. Piccirillo, Jr., Barbara J. Piccirillo, Raymond A. Piccirillo, Sr., and Mary P. Piccirillo, Ezra Weaver (a/k/a Sam Weaver) and Alice Weaver.

2. I arranged with Raymond A. Piccirillo, Jr. the details of this transaction.

3. The hypothecation agreement, guaranty agreement and assignment of account attached hereto as Exhibits "A", "B", and "C" were signed by Ezra M. Weaver and Alice F. Weaver in my presence.

4. The guaranty agreement was to guarantee to the extent of $50,000.00 the payment of a note attached hereto as Exhibit "D" and signed by Raymond A. Piccirillo, Jr. d/b/a/ Columbus Packing Company, Barbara J. Piccirillo, Raymond A. Piccirillo, Sr. and Mary P. Piccirillo.

5. I had never seen the "Agreement" attached hereto as Exhibit "E" prior to the filing of this action.

6. I had no knowledge of the contents of the "Agreement" attached as Exhibit "E" prior to the filing of this action.

7. Prior to the filing of this action, I had no knowledge of any agreement, oral or written, between Raymond A. Piccirillo, Jr. and Barbara J. Piccirillo t/d/b/a Columbus Packing Company and plain-

tiffs in this action with respect to the profits, management or fiscal control of Columbus Packing.

8. Prior to the filing of this action, I had no knowledge of any contractual interest of plaintiffs in Columbus Packing, either oral or written, in addition to the rights and obligations set forth in exhibits "A", "B", and "C" attached hereto.

9. At all times relevant to the involvement of the plaintiffs in this transaction, the only employees of Marine Bank who had direct contact with the plaintiffs regarding the transaction were myself and John Daggett.

Further deponent sayeth not.

/s/
Robert E. Santom

[Jurat omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYVLANIA

[Caption omitted in printing]

STATE OF PENNSYLVANIA

SS:

COUNTY OF ERIE

John J. Daggett, being first duly sworn, deposes and says:

I am John J. Daggett, Assistant Vice President and Assistant Manager, Corry area, Marine Bank, and have personal knowledge of the facts herein set forth.

This Affidavit is submitted in support of the defendant's Motion for Summary Judgment herein, for the purpose of showing that there is in this action no genuine issue as to any material fact, and that defendant is entitled to judgment as a matter of law.

1. I was a loan officer of the Corry Office of Marine Bank on March 17, 1978, which is the time and place of the loan transaction between Marine Bank and Raymond A. Piccirillo, Jr., Barbara J. Piccirillo, Raymond A. Piccirillo, Sr., Mary P. Piccirillo, Ezra Weaver (a/k/a Sam Weaver) and Alice Weaver.

2. My supervisor at the time was Robert E. Santom.

3. I had never seen the "Agreement" attached hereto as Exhibit "E" prior to the filing of this action.

4. I had no knowledge of the contents of the "Agreement" attached as Exhibit "E" prior to the filing of this action.

5. Prior to the filing of this action, I had no knowledge of any agreement, oral or written, between Raymond A. Piccirillo, Jr. and Barbara J. Piccirillo t/d/b/a Columbus Packing Company and plaintiffs in this action with respect to the profits, management or fiscal control of Columbus Packing.

6. Prior to the filing of this action, I had no knowledge of any contractual interest of plaintiffs in Columbus Packing, either oral or written, in addition to the rights and obligations set forth in exhibits "A", "B", and "C" attached hereto.

7. At all times relevant to the involvement of the plaintiffs in this transaction, the only employees of Marine Bank who had direct contact with the plaintiffs regarding the transaction were myself and Robert E.

Santom.

Further deponent sayeth not.

/s/
John J. Daggett

[Jurat omitted in printing]

HYPOTHECATION AGREEMENT

The undersigned hereby authorizes Raymond A. Piccirillo Jr. d/b/a Columbus Packing (hereinafter for convenience called the "Borrower", although the Borrower's liability may be only contingent) to pledge to Marine National Bank (hereinafter called "Bank"), at any time, now or hereafter, as collateral security for the payment and performance of each and every obligation and liability, direct or contingent, of the Borrower to Bank, due or to become due, whether now existing, or hereafter arising, the following property belonging to me/us:

Marine Bank Certificate of Deposit #38240 $50,000.00 due February 1984

And the undersigned expressly ratifies, consents to and adopts any and all agreements which the Borrower has made or may hereafter make with Bank regarding the use of said collateral, and the undersigned authorizes Bank to deliver all such collateral to the Borrower or to make such disposition of it and/or proceeds thereof as the Borrower may instruct, and the undersigned agrees that any and all such agreements and instructions of the Borrower shall be applicable to such collateral exactly as if such collateral were owned by the Borrower, and the undersigned shall not be subrogated to Bank's rights in any other collateral pledged by the Borrower and/or proceeds thereof.

The undersigned hereby waives any and all notices of every kind to which the undersigned might otherwise be entitled, either of the acceptance hereof by Bank, or of the incurring of any obligation or liability by the Borrower, or the demand for payment or the payment of all or any obligations or liabilities of the Borrower to Bank whether now existing or hereafter arising, or of the presentment of any instrument for the payment of money at any time now or hereafter held by Bank in connection with any obligation or liability of the Borrower, or of protest and/or non-payment thereof, or of any exchange, sale, release or other handling or disposition of all or any such collateral, or otherwise. The undersigned agree that the duty of reasonable care as to the custody and preservation of the property deposited as collateral herein shall be limited to the duty to return the same to the undersigned upon payment of the obligations of the undersigned, and the Bank shall have no duty to

sell, convert, exercise options or warranties, or in any manner deal with said collateral for the purposes of preserving the value thereof.

In witness whereof, I/we have hereunto set my/our hand(s) and seal(s) this 17th day of March, 1978, intending to be bound hereby.

/s/ Ezra M. Weaver (L.S.)

#1138 /s/ Alice F. Weaver (L.S.)

EXHIBIT "A"

Guaranty

1. DEFINITIONS—As used herein the following terms shall have the meanings indicated:
"Undersigned" means the person, including any form of legal entity, or, if more than one, all of the persons by whom, or on whose behalf, this Guaranty is signed.
"Bank" means MARINE NATIONAL BANK.
"Principal Debtor" means Raymond A. Piccirillo Jr. d/b/a Columbus Packing Company.
"Principal Debtor's Liabilities to Bank" means all existing and future liabilities, whether absolute or contingent, of the Principal Debtor to the Bank of any nature whatsoever and out of whatever transactions arising.

2. CONTINUING GUARANTY—The Undersigned hereby unconditionally guarantees to the Bank the due performance, including, but not being limited tc, the prompt payment when due, of the Principal Debtor's Liabilities to Bank. This Guaranty is a continuing one and shall be effective and binding on the Undersigned regardless of how long before or after the date hereof any of the Principal Debtor's Liabilities to Bank were or are incurred; provided, however, that any one of the Undersigned who gives written notice to Bank to that effect shall not be liable hereunder for such of the Principal Debtor's Liabilities to Bank as are incurred after the receipt by the Bank of such written notice, unless the same are renewals, extensions or modifications of liabilities theretofore existing or unless the Bank is bound by agreement entered into before the receipt of such notice to permit the same to be incurred.

3. AMOUNT OF LIABILITY—The amount of the Undersigned's liability hereunder shall be $50,000.00 (Insert "unlimited" or limited to $_____"). If no insertion has been made in the preceding space, the amount of the Undersigned's liability hereunder shall be unlimited. If the amount of the Undersigned's liability hereunder is herein limited, the Undersigned agrees that the amount of the Principal Debtor's Liabilities to Bank may from time to time exceed the said limit of the Undersigned's liability hereunder without in any way affecting the liability of the Undersigned hereunder, and the Bank may apply any payment with respect to Principal Debtor's Liabilities to Bank to or on account of such of Principal Debtor's Liabilities to Bank and in such

orders as the Bank may elect.

4. UNCONDITIONAL LIABILITY—The liability of the Undersigned hereunder is absolute and unconditional and shall not be affected in any way by reason of (a) any failure to retain or preserve, or the lack of prior enforcement of, any rights against any person or persons (including the Principal Debtor and any of the Undersigned) or in any property, (b) the invalidity of any such rights which may be attempted to be obtained, (c) any delay in enforcing or failure to enforce any such rights even is such rights are thereby lost, or (d) any delay in making demand on the Undersigned for performance or payment of the Undersigned's obligations hereunder.

5. WAIVERS—The Undersigned hereby waives all notices of any character whatsoever with respect to this Guaranty and the Principal Debtor's Liabilities to Bank, including but not being limited to, notice: of the acceptance hereof and reliance hereon, of the present existence or future incurring of any of the Principal Debtor's Liabilities to Bank, of the amount, terms and conditions thereof, and of any defaults thereon. The Undersigned hereby consents to the taking of, or failure to take, from time to time without notice to the Undersigned, any action of any nature whatsoever with respect to the Principal Debtor's Liabilities to Bank and with respect to any rights against any person or persons (including the Principal Debtor and any of the Undersigned) or in any property, including but not being limited to, any renewals, extensions, modifications, postponements, compromises, indulgences, waivers, surrenders, exchanges and releases, and the Undersigned will remain fully liable hereon notwithstanding any of the foregoing; provided, however, that the granting of a release of the liability hereunder of less than all of the Undersigned shall be effective with respect to the liability hereunder of the one or more who are specifically so released but shall in no way affect the liability hereunder of any not so released. The death or incapacity of any of the Undersigned shall in no way affect the liability hereunder of any other of the Undersigned. The Undersigned hereby waives the benefit of all laws now or hereafter in effect in any way limiting or restricting the liability of the Undersigned hereunder, including without limitation (a) all defenses whatsoever to the Undersigned's liability hereunder except the defense of payments made on account of the Principal Debtor's Liabilities to Bank and the Undersigned's liability hereunder, and (b) all right to stay of execution and exemption of property in any action to enforce the liability of the

Undersigned hereunder.

6. PAYMENT OF COSTS—In addition to all other liability of the Undersigned hereunder and notwithstanding the limit, if any, set forth in paragraph 3 hereof, the Undersigned also agrees to pay to the Bank on demand all costs and expenses (including reasonable attorneys' fees and legal expenses) which may be incurred in the enforcement of the Principal Debtor's Liabilities to Bank or the liability of the Undersigned hereunder.

7. ACCELERATION OF LIABILITIES—If any of the Principal Debtor's Liabilities to Bank is not duly performed, including the prompt payment when due of any amount payable thereon, all the Principal Debtor's Liabilities to Bank shall at the Bank's option be deemed to be forthwith due and payable for the purposes of this Guaranty and the liability of the Undersigned hereunder.

8. CONFESSION OF JUDGMENT—The Undersigned hereby irrevocably authorizes and empowers any attorney of any court of record to appear for and confess judgment therein against the Undersigned, or any of them, for the amount for which the Undersigned may be or become liable to Bank under this Guaranty as evidenced by an affidavit signed by an officer of the Bank setting forth the amount then due, plus 15% thereof, but no less than $500, as an attorney's commission, with costs of suit, release of errors, and without right of appeal. If a copy hereof, verified by an affidavit, shall have been filed in said proceeding, it shall not be necessary to file the original as a warrant of attorney. The Undersigned waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect. No single exercise of the foregoing warrant and power to confess judgment shall be deemed to exhaust the power, whether or not any such exercise shall be held by any court to be invalid, voidable, or void, but the power shall continue undiminished and may be exercised from time to time as often as the Bank shall elect, until all sums payable or that may become payable by the Undersigned have been paid in full.

9. NO SUBROGATION—So long as the Principal Debtor's Liabilities to Bank have not been paid in full, no payment by the Undersigned pursuant to the provisions hereof shall entitle the Undersigned, by subrogation to the rights of the Bank or otherwise, to any payment by the Principal Debtor or out of the property of the Principal Debtor.

10. OTHER GUARANTIES—A subsequent guaranty by the

Undersigned or any other guarantor of the Principal Debtor's Liabilities to Bank shall not be deemed to be in lieu of or to supersede or terminate this guaranty but shall be construed as an additional or supplementary guaranty unless otherwise expressly provided therein; and in the event the Undersigned or any other guarantor has given to the Bank a previous guaranty or guaranties, this guaranty shall be construed to be an additional or supplementary guaranty, and not to be in lieu thereof or to terminate such previous guaranty or guaranties unless expressly so provided herein.

11. MISCELLANEOUS—If the Undersigned consists of more than one person, such persons shall be jointly and severally liable hereunder. This Guaranty shall inure to the benefit of the Bank, its successors, assigns, endorsees and any person or persons, including any banking institution or institutions, to whom the Bank may grant any interest in the Principal Debtor's Liabilities to Bank or any of them, and shall be binding upon the Undersigned and the Undersigned's executors, administrators, successors, assigns, and other legal representatives. The Undersigned intends this to be a sealed instrument and to be legally bound hereby. All issues arising hereunder shall be governed by the law of Pennsylvania.

Executed this 17th day of March 1978.

(Individuals Sign Below)

/s/ Ezra M. Weaver (Seal)

/s/ Alice F. Weaver (Seal)

EXHIBIT "B"

Assignment of Account

FOR VALUE RECEIVED and intending to be legally bound, the undersigned does hereby sell, assign, transfer and set over unto MARINE NATIONAL BANK (hereinafter called "Bank") all the undersigned's right, title and interest in and to a certain deposit account in the undersigned's name in bank described as follows:

Marine Bank Certificate of Deposit #38240 $50,000.00
due February 1984

together with all monies due and to become due thereon, both principal and interest, as security for the payment of a loan in the amount of $50,000.00 made by bank to the undersigned on March 17, 1978, which loan is evidenced by a promissory note of the undersigned dated said date and in said amount. In the event of default in the payment of said note in accordance with its terms or upon the occurrence of any other event of default as specified in said note, bank is hereby authorized without notice to or demand upon undersigned to apply so much of the monies on deposit in said account as may be necessary to pay in full the amount then due and unpaid on said note or of any extension, renewal or revision thereof.

Payment in full of said note shall render this assignment void; otherwise the same shall be and remain in full force and effect. This assignment is the joint and several undertaking and obligation of the undersigned when more than one, and shall bind heirs, personal representatives, successors and assigns and shall inure to the benefit of bank, its successors and assigns.

Executed by the undersigned this the 17th day of March 1978.

/s/ Ezra M. Weaver (Seal)

/s/ Alice F. Weaver (Seal)

Assigment noted on ledger:

*By*_____

Date _____

EXHIBIT "C"

$65,000.00 March 17, 1978

For value received, Undersigned jointly and severally promise to pay to the order of MARINE BANK, a bank and trust company incorporated under the laws of the Commonwealth of Pennsylvania (hereinafter called "Bank"), at any of its banking offices, the principal sum of Sixty-five-thousand and 00/ 100 with interest at the rate of 10 percent per annum.

said interest to be payable monthly, provided, however, that in any month for which the interest charges is less than $7.50, Bank may impose a service charge which shall be the difference between the monthly interest due and $7.50. The principal hereof, together with all unpaid interest and service charges shall become due and payable (x) on demand ( ) on _____ 19___. (Unless indicated otherwise, this note is payable on demand.)

Undersigned, upon demand, agree to deposit with Bank collateral security for the payment of this and other notes and obligations of Undersigned to Bank, and Undersigned agree to deliver to Bank additional collateral, or to make payments on account, to Bank's satisfaction, so that at all times there shall be a margin of security in favor of Bank in an amount satisfactory to Bank. Undersigned hereby give to Bank a security interest in all property so given to Bank and to any property of Undersigned acquired by, or left in the possession of Bank, whether for the express purpose of being used by the Bank as collateral security, or for any other or different purpose, including safekeeping, and also upon any balance of any deposit account of Undersigned or any of them with Bank, to secure the payment of this and all other obligations of Undersigned, or any of them, to Bank, whether such obligations are due or to become due, are direct or contingent, or are now existing or herafter arise or are acquired by Bank.

On the non-payment of this note, or any installment thereunder when due, or upon the non-payment at maturity of any obligation or liability of Undersigned to Bank or any other party, or upon the failure of Undersigned forthwith, to deposit with Bank satisfactory additional property, or to make payments on account, as aforesaid, or in case of insolvency or bankruptcy of Undersigned, or any of them, or in case of insolvency or bankruptcy of any indorser or guarantor of this note, then and in any such case, this note and all other obligations and liabilities, direct or contingent, of Undersigned and each of them, to Bank, shall

forthwith, at the option of Bank, become due and payable without demand or notice, and Bank shall have the remedies of a secured party under the Uniform Commercial Code. The requirement of reasonable notice as may be imposed under the Code shall be met if notice is mailed, postage prepaid, to the Undersigned or any of them at the address shown on the records of the Bank at least five (5) days before the time of the sale of the collateral. Bank may exchange or surrender collateral from time to time, may grant extensions of time for payment hereunder or under any instrument or contract securing this note, and may proceed against all or any part of the collateral security without thereby affecting any liability of Undersigned. After deducting all costs and expenses of every kind for the collection of this note or the collection, sale, or delivery of the collateral securing the note, Bank shall apply the residue of the proceeds to the payment of Undersigned's obligations to Bank, returning the excess if any to Undersigned, who agree to be and remain liable, jointly and severally, for any deficiency. Undersigned hereby authorize and empower Bank at its option at any time to appropriate all monies now or hereafter in possession of Bank belonging to Undersigned or any of them, or credited to a deposit account of Undersigned with Bank, and apply such monies in payment of Undersigned's obligations to Bank.

All rights accorded Bank hereunder shall inure to Bank, its successors and assigns, and no delay in exercising any such rights shall operate as a waiver of such rights. Undersigned agree that Bank shall have no duty to sell, convert, exercise options or warrants, or in any manner deal with said collateral for the purposes of preserving the value thereof.

And further, Undersigned hereby authorize and empower the Prothonotary or any attorney of any court of record within the United States or elsewhere, to appear for Undersigned, and, with or without declaration filed, confess judgment against Undersigned in favor of Bank or any holder hereof, as of any term, for the unpaid balance hereof, with costs of suit and attorney's commission of fifteen percentum (15%) for collection, with release of errors, without stay of execution or right to appeal, waiving all laws exempting real or personal property from execution, and inquisition and extension upon any levy on real estate are hereby waived and condemnation agreed to, and no benefit of exemption will be claimed under and by virtue of any exemption law now in force or which may be hereafter passed. No single exercise of the

foregoing power to confess judgment shall be deemed to exhaust the power, whether or not any such exercise shall be held by any court to be valid, voidable, or void, but the power shall continue undiminished and it may be exercised from time to time as often as holder shall elect, until such time as holder shall have received payment in full of the debt, interest and costs.

The authority given in the foregoing warranty of attorney to confess judgment is: ( ) Limited (x) Unlimited

If "limited" is checked above, the following limitations shall apply (otherwise, there shall be no limitation of the authority given above):

Bank and any holder hereof expressly agree that the right to confess judgment or the exercise thereof shall not create or constitute a security interest in or a lien upon real property which is used or is expected to be used as the principal residence of Undersigned and Holder expressly release such real property from the lien of any judgment confessed pursuant to this instrument, and authorize the Prothonotary to note such release upon his records and Holder agree to make execute and deliver without cost to Undersigned any further instruments required to effectuate the above.

/s/ Raymond A. Piccirillo Jr.

/s/ Barbara J. Piccirillo

/s/ Raymond A. Piccirillo Jr.
d.b.a. Columbus Packing Co.

/s/ Raymond A. Piccirillo Sr.

/s/ Mary T. Piccirillo

DISCLOSURES REQUIRED BY FEDERAL TRUTH-IN-LENDING LAW regarding the loan evidenced by the above note are made below.

Loan Proceeds	Other Charges	Amount Financed	FINANCE CHARGE	Total of Payments
BUSINESS LOAN				

ANNUAL PERCENTAGE RATE	Payable in one payt.
_____%	☐ on demand ☐ on _____ 19___

Describe "Other Charges"_____

Check here ☐ if the following terms apply: The ANNUAL PERCENTAGE RATE of this loan may increase or decrease. It changes by the same amount or any change in the ___ _____ rate as quoted _____ but will not be more than _____% or less than _____%.

FINANCE CHARGE begins to accrue on _____ 19___ (if no date shown, on date of note) and is payable monthly. If "on demand" is checked above, FINANCE CHARGE shown is for month period; no penalty for prepayment: FINANCE CHARGE for a portion of a period is prorated. If monthly interest is less than $7.50, a service charge equal to the difference between the interest charges computed and $7.50 will be made.

COLLATERAL: The above contract creates a security interest under the Uniform Commercial Code in favor of Bank in the following property:

and in all deposit accounts of signers with Bank, and in all money and property of signers now or hereafter held by Bank, as collateral or for some other purpose. This extension of credit is further secured by

This Collateral secures this loan and all other and future debts of signers to Bank, and Signers agree to give Bank more collateral or reduce debt on demand by Bank. If "unlimited" is checked in note, the warrant to confess judgment note permits the holder of note to obtain a lien on all real and personal property owned by signers. If "limited" is checked, holder may obtain a lien on all personal property and all real property of signers excepting real property signers use or intend to use as their principal residences.

Default charges up to 15% of amount lent may be charged to cover attorney fees and court costs for collection.

MARINE BANK

By /s/ R. S. Santom

Copy of the above note and Truth in Lending disclosures received by:

/s/ Raymond A. Piccirillo Jr.

/s/ Barbara J. Piccirillo

NOTICE: See other side for important information.

EXHIBIT "D"

For value received, I/we hereby guarantee the payment of the within note at maturity, with interest and other charges, waiving protest, demand, notice of non-payment and all defenses arising out of lack of diligence in enforcing payment thereof. I/we assent to all the terms and conditions of said note, and consent that any security for said loan may be exchanged or surrendered from time to time, or the time of payment of loan be extended, without notice to or further assent from the undersigned who will remain bound upon this guaranty, notwithstanding such changes, surrender or extension. The undersigned hereby authorizes and empowers the Prothonotary or any attorney of any court of record within the United States or elsewhere, to appear for the undersigned, and, with or without declaration filed, confess judgment against the undersigned in favor of the payee or any holder hereof, as of any term, for the unpaid balance hereof, with costs of suit and attorney's commission of fifteen percentum (15%) for collection, with release of errors, without stay of execution or right to appeal, waiving all laws exempting real or personal property from execution, and inquisition and extension upon any levy on real estate are hereby waived and condemnation agreed to, and no benefit of exemption will be claimed under and by virtue of any exemption law now in force or which may be hereinafter passed. No single exercise of the foregoing power to confess judgment shall be deemed to exhaust the power, whether or not any such exercise shall be held by any court to be valid, voidable, or void, but the power shall continue undiminished and it may be exercised from time to time as often as holder shall elect, until such time as holder shall have received payment in full of the debt, interest and costs.

_____ (Seal)

_____ (Seal)

_____ (Seal)

Property of signers deposited with Bank as collateral (Continued from other side):

NOTICE: See other side for important information.

[Exhibit "E" of the affidavits, the agreement between Raymond A. Piccirillo, Jr., Barbara J. Piccirillo, his wife, t/d/b/a/ Columbus Packing Company and Samuel Weaver and Alice F. Weaver, his wife, is reproduced at page JA-11 of this appendix.]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYVLANIA

[Caption omitted in printing]

PLAINTIFF'S ANSWER TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

AND NOW, comes the plaintiffs, Ezra Weaver and Alice Weaver, by their counsel, Dunn & Conner, by Andrew J. Conner, and answers defendant's Motion for Summary Judgment alleging as follows:

1. That there was the purchase and sale of a security by Weaver to Marine Bank and specifically, a sale of a $50,000 certificate of deposit to Marine Bank on March 17, 1978.

2. That they purchased a second security on March 17, 1978 "in connection with" the transaction made reference to in the above paragraph of this answer.

3. There are genuine issues of material facts as to whether the defendant, Marine Bank violated Section 10(b)5 of the 1934 Securities and Exchange Act and Section 17(a) of the 1933 Securities and Exchange Act in connection with the purchase and sale of the aforementioned securities, causing the Weavers at least $50,000 in damage, all of which would preclude the courts from granting defendant's Motion for Summary Judgment.

4. Attached to this Answer, is the affidavit of Ezra and Alice Weaver, plus Exhibits.

Respectfully submitted,
DUNN & CONNER

By: /s/
Andrew J. Conner
Attorneys for Plaintiffs,
Samuel and Alice Weaver
1111 Baldwin Building
Erie, Pennsylvania 16501
(814) 453-6011

Dated: December 18, 1979

[The unlettered exhibit to the answer, the agreement between Raymond A. Piccirillo, Jr., Barbara J. Piccirillo, his wife, t/d/b/a Columbus Packing Company and Samuel Weaver and Alice F. Weaver, his wife, is reproduced at page JA-11 of this appendix.]

AFFIDAVIT

STATE OF PENNSYLVANIA

SS:

COUNTY OF ERIE

BEFORE ME, a Notary Public, personally appeared EZRA WEAVER and ALICE WEAVER, who, being duly sworn according to law, depose and say that the facts set forth herein, are true and correct to the best of their knowledge, information and belief.

1. Our names are Ezra (Sam) and Alice Weaver. We are the plaintiffs in this action. We reside at R.D. #4, Union City, Pennsylvania. We are presently 79 years of age and 71 years of age, respectively.

2. Our formal education is limited to that of the 8th grade. We have had no other formal education or accounting experience in our working life. For the greater part of our working life, we have been dairy farmers and livestock traders and since October of 1977, we have operated a small livestock auction in the Union City, Pennsylvania area.

3. On February 28, 1978, we were the co-owners of a $50,000 certificate of deposit which we purchased at the Corry office of the Marine Bank. This certificate of deposit was Serial No. 38240 and had a due date in February of 1984. We purchased that certificate of deposit on that date for purposes of having money available for the operation of our livestock auction made reference to above.

4. Prior to March 17, 1978, we did not owe the Marine Bank any money. Further, we were not a creditor and/or debtor Raymond Piccirillo, Jr., d/b/a/ Columbus Packing. We had no investment interests whatsoever in the business known as the Columbus Packing.

5. On and prior to March 17, 1978, we were both solicited and induced by Thomas Daggett and Robert Santom, officers and employees of the Marine Bank to pledge, the $50,000 certificate of deposit, made reference to above, to the Marine Bank in exchange for the Marine Bank using all, or substantially all of the $50,000 and/or its proceeds, for working capital for Raymond Piccirillo, Jr., d/b/a Columbus Packing.

6. On March 17, 1978, we pledged the certificate of deposit, made reference to above, to the Marine Bank, based upon the representations and solicitations of the employees of Marine Bank made reference to above.

7. It was specifically represented by Thomas Daggett and Robert

Santom of the Marine Bank, with respect to our pledging of this certificate of deposit to Marine Bank as follows:

(a) all or substantially all of the $50,000 represented by the certificate of deposit would be made available to Raymond Piccirillo, Jr., d/b/a Columbus Packing for working capital;

(b) that there would be little or no risk to the Weavers' making this pledge of this certificate of deposit because the Marine Bank had a perfected lien on Columbus Packing's equipment and that the value of this equipment was substantially in excess of the $50,000 and whatever indebtedness Columbus Packing owed; and

(c) that Marine Bank would provide the Weavers' with a monthly profit and loss statement.

8. On and prior to March 17, 1978, the Marine Bank did not make the Weavers' aware, and the Weavers' were not otherwise aware of, the following:

(a) that Marine Bank was owed any money by Raymond Piccirillo, Jr., d/b/a Columbus Packing was delinquent on any loans to the Marine Bank ;

(b) that Columbus Packing was overdrawn, and had been overdrawn, in substantial amounts of money in the checking account which Columbus Packing maintained at the Marine Bank ;

(c) that the Small Business Administration in September of 1977 had refused to make a loan to Columbus Packing;

(d) that Raymond Piccirillo, Jr., d/b/a Columbus Packing was insolvent and was in a negative capital position in 1977 and 1978;

(e) that Raymond Piccirillo, Jr., d/b/a Columbus Packing owed the United States Internal Revenue Service withholding taxes for 1977 and 1978;

(f) that Raymond Piccirillo, Jr., d/b/a Columbus Packing was in a bad financial condition;

(g) that at least $42,000 of whatever proceeds were going to be generated by the Weaver's pledge of the $50,000 certificate of deposit would be paid back to Marine Bank to reimburse it for the overdrawn checking account and reimburse it for the notes and loans which Marine Bank had made to Columbus Packing in 1977 and 1978, and;

(h) that Columbus Packing was not going to realize anymore than $3500 - $4000 in working capital as a consequence of the Weavers' pledging the $50,000 certificate of deposit made reference to above.

9. On March 17, 1978, we pledged the certificate of deposit to the

Marine Bank and in connection therewith, in consideration for receiving an agreement from Raymond A. Piccirillo, Jr. and Barbara J. Piccirillo, d/b/a Columbus Packing Company to share in the profits in the operation of Columbus Packing Company with a true and correct copy of the agreement being attached to this affidavit, designated Affidavit Exhibit A.

/s/
Ezra Weaver

/s/
Alice Weaver

[Jurat omitted in printing]

EXCERPTS FROM THE DEPOSITION OF ROBERT SANTOM, MARINE BANK TAKEN JULY 3, 1979 AND FILED IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

* * *

[TR. 91] Q. Are you familiar with the F.D.I.C. procedure of classifying loans?

A. Yes sir.

Q. Can you tell us what your knowledge of that is?

A. Well, when the examining force comes in from the F.D.I.C., the Federal Deposit Insurance Corporation, they classify loans which they consider to be potential losses to the bank, and at that time, if they consider it to be a potential loss, they instruct the bank to charge that thing off against profits that the bank has. They will classify loans as doubtful; they will classify loans as being classified for purposes of inadequate financial statements, evidence of inability to repay because of inadequate cash flows. There are many different types of classification. I think primarily there are three.

Q. What are the three?

[TR. 92] . Well, here again, I think it's doubtful—or number one would be the classification of inadequate information; number two would be doubtful, and number three would be what they consider to be a loss in those particular areas.

Q. Do you know whether or not the Columbus Packing loan was ever classified?

A. To the best of my knowledge, that loan did not appear on any classified report by the F.D.I.C., at least none that I saw.

Q. With regard to the state banking people, do they have a similar type procedure that classifies loans?

A. Yes sir.

Q. Why don't you tell us your knowledge of that?

A. Well, it's basically the same system as the F.D.I.C.; they work in conjunction one with the other; they audit at the same times, as a matter of fact. Their classifications are almost identical.

Q. Do you know whether it was ever classified under the state banking procedure, and I'm talking about the Columbus Packing loan?

A. To the best of my knowledge, it was not, at least on any reports that I saw.

[TR. 95] Q. Okay, there's one other document here that we had marked and I want to make sure we have that, and that's the accounting statement that we asked Mr. Daggett some questions about. Showing you Daggett Exhibit 2, can you tell us whether or not you're familiar with that document?

A. This is apparently a financing statement that has been presented by Columbus Packing Company under the date of October 31st of 1977.

Q. Do you understand that that was presented to Marine Bank?

A. If it were found in our folders, I would assume it was presented to Marine Bank.

Q. Did you ever review that accounting statement?

[TR. 96] A. I may have glanced at that particular accounting statement, but I was dealing on a more current basis with Piccirillo in my conversations with him.

Q. Did you ever have any more current accounting information from Mr. Piccirillo other than the information contained in Daggett Exhibit 2?

A. Only from a standpoint of a listing that he prepared by handwriting of receivables and payables that he had, and based on certain sales that he had had over the past six or seven months.

Q. I think you indicated that Columbus Packing's financial condition remained relatively stable between December of '77 and March of '78?

A. Yes. I didn't see anything that would change his condition from the time that I began negotiations with him at the early part of January, '78 through March, '78.

* * *

[TR. 99] Q. With regard to the accounts receivable and inventory, just confining myself to those items, would it indicate to you on your records as compared to October 31st, 1977, that there had been a worsening of his condition between October of '77 and December of '77 when you started work on this particular account?

A. That would be the indication to me, yes.

Q. Now, with regard to the document titled Daggett Exhibit 2, and from your experience as an accountant, can you tell whether or not Columbus Packing as of October 31, 1977 was solvent?

A. Columbus Packing Company, to the best of my knowledge, has never been solvent, has never had an adequate capital base; that was the primary problem they were dealing with right from the very beginning.

* * *

[TR. 106] Q. I think you indicated that the debt position of Columbus Packing was a topic that was discussed?

A. Yes sir.

Q. What was discussed with respect to the debt position of Columbus Packing Company?

A. At that point it was pointed out the amount of money that would be needed to properly restructure the debt and inject adequate operating capital into the business, what existing debts would be paid off with those funds in order to bring the payment position into a place where it could be handled by Columbus Packing adequately. I had at that point a list of obligations which would be paid off, the payoff balances on those particular obligations, and I think at that point in time, it may have been approximate figures; they were not exact payoff figures, because we didn't have a closing date on the loan on the date that I had met with Piccirillo and Weaver, but I had approximately the amount that coresponded to the need for a new debt position with Columbus Packing Company of sixty-five thousand dollars.

Q. From your standpoint, how much working capital **[TR. 107]** would Columbus Packing need to make it a viable operating concern?

A. Well, with the consolidation of the debt position that he had, consolidating those monthly payments into a one-payment situation over an extended period of time, and the elimination of the current overdraft position in the account, we felt that the injection minimum of ten thousand dollars would be required into the operating account to keep it going at that point.

Q. When had you made that analysis?

A. Probably sometime in our early conversations with Piccirillo in January, February, when we were first doing the analysis on the account, determining what the problems were with regard to Columbus

Packing Company, and I had given Mr. Piccirillo on more than one occasion the minimum requirements that the bank would consider for the purpose of restructuring the debt.

Q. What were the minimum requirements?

A. A consolidation of those existing debt positions, plus a minimum capital injection of ten thousand dollars operating cash.

Q. Would the consolidation and injection of **[TR. 108]** ten thousand dollars, as you have defined as the minimum requirements, make Columbus Packing solvent?

A. That in conjunction with the tightening down of certain of his expenses; for example, reducing his two-business operation into a one-business operation, which we discussed with him at length.

Q. Why don't you be specific with regard to that, because that's something new today.

A. Well, he has a wholesale slaughterhouse which contained a retail outlet when he originally started his business, when he originally acquired the business. Subsequent to that, he branched out and opened up a retail meat market in Corry, Pennsylvania. He hired a manager to run that thing, he hired meat cutters to work in the place, and our recommendation was that he close that operation down, move that retail operation back into the wholesale plant where he had the facilities, and eliminate some of his overhead costs.

Q. How much overhead cost did you anticipate eliminating because of that step?

A. I can't recall the figures offhand. I would say probably a minimum of salaries of twelve thousand dollars a year, **[TR. 109]** a rental figure of one hundred and a quarter a month, plus his expenses for light, heat, things of that nature. I don't recall the total position at this point.

Q. If he hadn't done that, and assuming that these other things being equal that we have just discussed, would Columbus Packing have been solvent with a ten-thousand-dollar capital investment?

A. I can only answer your question to say that he would have been more solvent than what he was prior to that time and he would have at least had the opportunity to salvage the business. He was going to have to make some sacrifices at that point himself in taking salary out of the business.

[Off-the-record discussion.]

[Answer read.]

Q. In that context, you mentioned salvaging the business. Can you tell us specifically what you mean by the word "salvage" the business in that context?

A. Well, I think we can all be aware of the fact that Columbus Packing Company was having financial difficulties primarily in the areas of cash flow. By the consolidation of the debt position that he had, and reducing **[TR. 110]** the monthly outlay of cash for payments, he would have been in a much healthier position at that point.

Q. And is that what you mean by salvaging the business?

A. Yes sir.

***

[TR. 122] A. In my opinion, the collateral was very close to liquidating the overdraft situation, including the overdraft.

Q. During the meeting of March 15, 1978, do you recall mentioning to Mr. Weaver the dollar figure, in your opinion, that would be left for working capital after all these expenses were paid out of the sixty-five-thousand-dollar loan, and if so, what was the dollar figure?

A. To the best of my recollection, we talked in the neighborhood of about ten thousand dollars.

Q. And was identified as being available for working capital?

A. That's correct.

Q. And from your analysis, if Columbus Packing had ten thousand dollars in working capital at that time, would they have been a viable operating company?

A. Again, in my opinion, under the conditions of the debt restructuring, under the conditions of the other things that we had talked about in the way of controlling expenses, this company had an opportunity to make it. It was going to be a struggle for them, but they had an opportunity to make it, in my opinion.

***

[Tr. 124] Q. What consideration or value, if any, did Marine Bank intend to give Mr. Weaver in exchange for his pledging fifty thousand dollars?

A. Well, interest on his certificate of deposit would be the only consideration that I was aware of.

Q. Let's talk about that, the interest on the CD. So what you're talking about is the interest rate that would be payable under that

particular certificate of deposit, is that correct?

A. That's correct.

Q. And that's something that he had before he made this pledge, is that correct?

A. Well, I don't know that. I don't know where these things were prior to his coming in and depositing them in our bank. I don't know whether he had them in a checking account or a savings account.

Q. What, if anything, did Mr. Piccirillo, in your presence, indicate he was willing to give Mr. Weaver in exchange for Mr. Weaver doing this?

A. I don't recall having heard Tony say anything at all to Sam Weaver about what he was going to do or—I don't recall **[TR.125]** anything on that line.

Q. What was your understanding, if any, as to what Mr. Weaver was going to receive from Mr. Piccirillo or Columbus Packing?

A. I can recall one particular conversation that I had with Tony about this and he implied that his connections with the farmers around the area and so forth was going to assist in increasing the sale of cattle through Sam's auction barn, but that was the extent of any conversation. Beyond that point, there was no conversations about it.

Q. What, if anything, did Mr. Piccirillo—and I'm talking about specifically Mr. Piccirillo in his relationship to Columbus Packing—what, if anything, of value did he have at that time, either by way of assets or investments, to give Mr. Weaver in exchange for Mr. Weaver pledging the fifty-thousand-dollar certificate of deposit?

A. To the best of my knowledge, outside of the assets that were already pledged to the bank, I don't believe Mr. Piccirillo had any assets or anything of value that he could pledge with Mr. Weaver.

Q. Was it your understanding that whatever Mr. Weaver was to receive as a consequence of this was to come from Mr. **[TR. 126]** Piccirillo or Columbus Packing as opposed to Marine Bank?

A. I didn't have any understanding about return to Mr. Weaver. My understanding of the matter was that Mr. Piccirillo had known Weaver for a number of years, and it's my understanding that Mr. Weaver was doing this to help Mr. Piccirillo out of a problem he was having. There was no conversations about anything in the way of payment for that service, or anything of that nature.

Q. Was it your understanding that he was to receive nothing of value from Mr. Piccirillo or Columbus Packing as a consequence of this

other than what you've just described?

A. I have no knowledge of anything outside of that.

***

[Tr. 150] Q. Now, with regard to the equipment, and I'm talking about the equipment you may have had a security interest in, can you tell us what steps, if any, you took with respect to the equipment after you became the debtor in possession?

A. We took over as debtor in possession, we padlocked the doors, we put our own insurance on the equipment to protect the bank. Shortly after that we were notified that the bankruptcy proceedings were under way. We turned all of the assets over to the trustees in bankruptcy, and it was at that time that we learned that our filing of our security agreement financing statements were not within the time limits of the bankruptcy, and therefore, we lost our perfected position.

Q. On the equipment?

A. On the equipment, accounts receivable and **[TR. 151]** inventories; everything was on that financing statement.

Q. Was that the first time that you had realized that there was a problem with the filing of the security agreement?

A. Yes, it was.

Q. And the date of that is June 21st, June 22nd of 1978?

A. I'm not sure when the filing of the bankruptcy took place, but it was in this time frame that we learned this.

Q. Now, you've mentioned the term "restructuring" the loan, I think that's the term that you used, with reference to this particular transaction, is that correct?

A. Yes, it is.

Q. Can you tell us when it was that you had made a decision as to restructuring this particular loan?

A. Well, the conversations started back in December and January with Mr. Piccirillo as the owner-manager of Columbus Packing Company, and it was during those negotiations that we pointed out to Mr. Piccirillo that he could not continue in business under the present status that he had, because he didn't have a sufficient amount of cash **[TR. 152]** flow going, that it was absolutely necessary that he inject additional capital into his business or to restructure the debt in such a way that it would improve his cash flow on a monthly basis. We told Mr. Piccirillo that he had to come up with some money somewhere along the

line to put into the business to eliminate the debt position that he had so he wouldn't have such big payments, or to restructure the loans. Mr. Piccirillo went out and attempted in several different areas to raise capital. He talked to at least one other financial institution that I know of to restructure his debt position and inject additional capital into his business, and then the net results of those were the Weaver transaction in which we were satisfied with the collateral position to go ahead and risk restructuring the debt position.

Q. Okay, did you encourage Mr. Piccirillo to go out and secure investors for his business?

A. Not at all. We told him what was absolutely necessary, gave him the choice of doing either that, finding a buyer for his business, or selling the business and going out of business.

***

[TR. 167] Q. This is a banking document?

A. That's what we call a spread sheet. That's what lending officers will use to spread and analyze an account. There is another portion to it which is the reverse side to it that gives you some R&A percentage factors, and so forth.

Q. From your understanding of the document, there was an indication, I believe, in the column or row identified as row 11 identifying a number for fixed assets, and it indicates one hundred and thirty-seven thousand four hundred and sixty-seven dollars of fixed assets?

A. Okay.

Q. And then down at the lower column, identified as row 18, for total assets there is an identification of one hundred and sixty-six thousand four hundred and forty-nine dollars.

A. Okay. That's a combination of these two figures.

Q. Yes, a combination of current total assets and fixed assets. There is no indication as far as what the liabilities are on this document, is that correct?

A. No.

Q. Okay, now as of March 17, 1978—or March 15, 1978, if you will, had Weaver not been willing to pledge th[illegible] **[TR. 168]** fifty-thousand-dollar certificate of deposit, what course of [illegible]ction, if any, was the bank going to take.

A. Well, I think I gave you those courses of action that we had

laid before Piccirillo: number one, to inject the capital into the business; number two, if that could not be accomplished, then the next thing for him to do was to find a buyer for the business and sell it, and if he couldn't accomplish that, then the next thing for him to do was to sell off the assets, reduce the debt position at that point in time and get out of the business. The next alternative to that would have been that the bank would have taken the position of foreclosing the business and recapturing our assets and liquidating the debt position.

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EXCERPTS FROM THE DEPOSITION OF JOHN DAGGETT, MARINE BANK, TAKEN JULY 3, 1979 AND FILED IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

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[TR. 19] Q. You mentioned a file. Did you in the ordinary course of your duties at Marine Bank keep a file or have possession, custody or control over a file relating to Columbus Packing?

A. No.

Q. You kept no file yourself?

A. No.

Q. Did you have access to a file?

A. Yes.

Q. Okay, and who would have had the file itself? Who would have physically controlled the file that you had access to?

A. Well, normally, there is no one that physically controls the file. We keep all our files in the central **[TR. 20]** filing area in the bank.

Q. And they would be kept under the name of the account?

A. Yes.

Q. And in the course of your duties, if you wanted to go and look at a file, you could go and look at a file if you so desired?

A. Correct.

Q. Starting in January of '78 and running, say, through February of '78, could you just tell us in chronological order what steps, if any, you took with regard to handling this particular account, and I'm talking about the Columbus Packing account?

A. Yes. I became—I considered myself involved in this when Tony approached me that there was some conversation with Bob and Tony that Tony needed to have capital in the business, capital had to be injected in the business, something had to be done to bring this thing around. Tony came to me with an investor, that investor being Sam Weaver. He came to my desk one day and discussed this with me, and that was the first time I became involved, other than routine assignments as a lending officer to work with it under the **[TR. 21]** direction of Will and Bob, but that was really my first involvement with it. From that point, I gave Tony applications; he took them and brought them back filled out with Sam Weaver to show a little bit of what Sam was worth

and how he could be involved, and such, and that's how it started. Then—and I'm not sure of the dates on this actually when these things happened, but Tony had set up a meeting with myself and Sam. Sam preferred to meet at his house. He didn't want to come to the bank because he didn't feel right in the bank with the clothes he wore, and working around the farm and stuff, so I agreed to do this, and we met at his trailer, and I was there for maybe a couple of hours and discussed all the various ways that possibly Sam could get involved. He asked, you know, what he would need as collateral and how he would become involved, and I tried to explain to him to the best of my ability the various ways that he could become involved in the loan if he wanted to, through land, through money, and he decided he didn't want to involve any of his property, and this is how we came down to the dollar amount, the cash amount, by bringing in the certificate. That was the first time, but then Sam would call me. I would stop, because I have to go by his home, on the **[TR. 22]** way to work, and one day he would be in favor of becoming involved with Tony and then he wouldn't, he would change his mind and not be. I don't know how many times Sam called me, and maybe a couple times I would stop and he would ask me some particular question on maybe what Tony was doing, and I would answer this and leave, and so this went on, and I'm not sure of the dates, until finally he did agree on a specific amount and that was settled with Tony and Bob, and at this time, I was at the Mellon School, so I was out of the bank for a week when the events actually happened. So that was my contact with the loan and with Sam and Tony.

Q. Okay, so let's go back so we can try to get these things defined more specifically. You mentioned that there was a time, I think, when Tony came to you indicating that he had talked to Bob, indicating Mr. Santom?

A. Yes.

Q. And he had indicated that, according to Bob, that he, Tony, needed investors in Columbus Packing?

A. He needed money into the—somehow he had to get some money into the business, that there just wasn't enough money to support the debts and give him a cash flow.

***

[TR. 24] Q. Did he indicate any dollar amount that Mr. Weaver was interested in investing in the business?

A. Not at that time, I don't think.

Q. And then thereafter, did you then meet with Mr. Weaver?

A. Yes.

Q. And who set that meeting up?

A. Tony did.

Q. And where was the meeting?

A. At Sam's house, Mr. Weaver's house.

Q. And would I be correct that this was either in January or February of 1978?

A. Yes.

Q. And who was present at that meeting?

A. Mr. and Mrs. Weaver, Tony and myself.

Q. And the purpose of the meeting was what, as you understood it?

A. A general discussion on the condition of Tony's business, what Tony needed, and how Sam could become involved and help him.

Q. What discussion was there as to the condition of **[TR. 25]** Tony's business.?

A. Well, that it needed money and that without capital, without money put into this business, it really would not be able to exist very much longer.

Q. Okay, was that stated?

A. Yes.

Q. And was there any discussion as to how much money Piccirillo or Columbus Packing owed Marine Bank at that time?

A. I think so, but I'm not sure.

Q. Who stated anything with regard to what Columbus Packing owed Marine Bank at that meeting, if you can recall?

A. How much they owed Marine Bank?

Q. Or whoever stated anything—

A. Well, it would have to be me, because I had the figures with me as far as dollars. What would be needed and what their debt was, I'm sure I would have to say it would come around to a dollar amount.

Q. You would have been the one that would have been privy to that information specifically?

A. At that meeting, yes.

* * *

[TR. 30] Q. Was there any indication as to what Marine Bank

intended to do if Mr. Weaver either invested or loaned any money to Columbus Packing?

A. What they intended to do?

Q. Right. Did you ever tell Mr. Weaver as to what Marine Bank intended to do if Mr. Weaver made an investment of any sum of money into Columbus Packing?

A. Well, at that meeting, I would say no, because that meeting was very general in how much money—between Tony and Sam, they kicked around different amounts, some things that Tony would like to do. They kicked around various dollar amounts. My conversation with him was very general in his investment and what collateral he could use. That's what was really the purpose of the meeting.

Q. You're talking about Mr. Weaver's investment?

A. Right.

Q. And you mentioned dollar figures. Can you just recall here today what dollar figures were mentioned in that **[TR. 31]** conversation?

A. Well, it seemed to me at first that Sam and Tony were talking one hundred thousand dollars initially. That was the first dollar amount that was being kicked around.

Q. Okay, were there any other dollar amounts other than one hundred thousand?

A. That was the highest. I don't know what it went down to from there.

Q. You can't recall the lowest?

A. Well, I think the lowest was fifty thousand. I think that's what the lowest—that's what Sam agreed to invest in the business.

Q. What did you understand from that conversation as to what type of return Weaver was going to receive for his fifty thousand or one-hundred-thousand-dollar investment?

A. None.

Q. You had no understanding one way or the other?

A. No.

* * *

[TR. 37] Q. Was he current on his payments at the time that you first sat down and talked to Mr. Piccirillo and Mr. Weaver?

A. I don't know if it was that day.

Q. Okay, were there any other conversations in the first meeting that you can recall that Mr. Weaver made or Mr. Piccirillo made as

you're sitting here today?

A. Other comments?

Q. Any other conversation that took place that you can recall here today, other than the conversation or comments that you have summarized here in your testimony.

A. Well, there was a lot of conversation, but it was all pertaining, you know, to this loan.

Q. Okay, now, you say "this loan". Was there any discussion at that time that Marine Bank would be willing to loan Mr. Piccirillo some money if Mr. Weaver made an investment in Columbus Packing?

A. If the loan could be restructured under the proper money being invested, that Marine Bank would be willing to do this, yes.

Q. Did you express that to Mr. Piccirillo and Mr. Weaver?

[TR. 38] A. Yes.

Q. Now, you mentioned, I think, the proper amount—am I using the right term?

A. Proper amount?

Q. Yes, is that the term that you used?

A. For restructuring the debt?

Q. Right.

A. Yes, I think so.

Q. Did you express the proper amount?

A. No.

Q. That wasn't discussed?

A. The proper amount was discussed in general terms, but as I said, I went out there with Tony and Sam talking one hundred thousand dollars. That was the amount that they were talking first that Sam was going to invest, so that dollar amount was discussed. But the proper amount, what the proper amount was, I'm not saying that would have to be the proper amount, but that dollar amount was discussed.

Q. Was there a second meeting between you, Mr. Piccirillo and Mr. Weaver?

A. Not together, no. I met with Sam, but not with Tony there.

[TR. 39] Q. Okay, was there a second meeting between you and Mr. Weaver then?

A. Yes.

Q. And this took place at Mr. Weaver's home?

A. Yes.

Q. And I think you had indicated in your prior testimony that

Mr. Weaver had requested that the meeting take place at his home?

A. That's correct.

Q. Can you tell us, if you recall, who was present at that second meeting?

A. Only Sam and myself. I think the second meeting—in fact, Sam was on a bulldozer or a plow. He called me, I think it was before seven o'clock in the morning, actually got me out of bed, and asked me if I would stop out and he had some questions for me, and I said yes, I would, and I did do this, and it was probably like eight o'clock, and like I said, he was concerned, you know, whether to be involved or not, and I'm not sure what the questions were he would ask me. He would ask me—I'm not sure what his questions were, and I would talk to him and he would call me on the phone and I would talk to him on the phone.

* * *

[TR. 59] Q. Did Marine Bank ever give him anything of value in exchange for pledging the fifty-thousand-dollar, or tendering to you the fifty thousand dollars on 2/28/78?

A. Of value, no.

Q. What, if anything, did Mr. Piccirillo have to give Mr. Weaver that you were aware of?

A. Nothing.

Q. Can you tell me, Mr. Dagget, whether or not Marine Bank ever gave Mr. Weaver anything of value in exchange for the fifty-thousand-dollar certificate of deposit that you can tell us about today?

A. The only thing he would get for the fifty thousand dollars, he would receive interest on his certificate, that's all.

Q. That's the interest payments that would normally **[TR. 60]** and customarily be due?

A. On a certificate at that time, yes.

Q. But other than that, that's the only thing that you could state that Mr. Weaver would be receiving?

A. Yes.

Q. What was your understanding as to what, if anything, Mr. Weaver was to receive from either Mr. Piccirillo or Columbus Packing in exchange for giving or pledging the fifty-thousand-dollar certificate of deposit to the Marine Bank?

A. Nothing.

Q. And when you say nothing, you had no understanding or

there was nothing that was going to be given by Mr. Piccirillo or Columbus Packing to Mr. Weaver?

A. That's correct. That confused me, because I could never understand why Mr. Weaver would want to be involved, but there was nothing that I was aware of.

Q. Did you ever ask Mr. Weaver why he was willing to do this?

A. No, I don't think so, no.

Q. Did you ever ask Mr. Piccirillo as to why Mr. Weaver was doing it?

[TR. 61] A. Yes.

Q. What was your response from Mr. Piccirillo?

A. The only thing that Tony ever said, that he would possibly be able to help Sam in his business, that Tony knew a lot of farmers that may be able to help Sam's business, because Tony knows a lot of people who Sam didn't. And Sam's age, Tony would be a much younger man and stuff, that he might be able to help him that way.

Q. Was this related to you before or after the time that Mr. Weaver gave Marine Bank the certificate of deposit on 2/28/78?

A. That would have to be before.

* * *

EXCERPTS FROM THE DEPOSITION OF EZRA M. (SAMUEL) WEAVER, PLAINTIFF, TAKEN AUGUST 10, 1979 AND FILED IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

* * *

[TR. 13] Q. Did Mr. Daggett come at your request?

A. I never asked him to.

Q. You never called him?

A. Never called him.

Q. Did he call you?

A. I would think so, when he called me when he would be up to my place, that was all.

Q. Did he call you on the telephone before he came to see you?

A. Sometimes, yes, to see if I would be home.

Q. Did he make any statements to you that Mr. Piccirillo, Jr. had sent him or had requested that he come?

A. No. No, he never told me anybody outside of that he would like me to furnish some working capital for Mr. Piccirillo through the bank.

Q. What was your first contact with Marine Bank?

A. Mr. Daggett. Well, the first contact, you mean when I put the money in the bank?

Q. The first contact on this whole transaction, what was your first contact with the bank?

[TR. 14] A. To loan the money for Piccirillo?

Q. Uh-huh.

A. When Mr. Daggett come to my place.

Q. Was anyone with him?

A. No, he came alone one morning, cold morning when I was plowing snow. And I told him at that time no deal, I didn't want no part of it. I practically chased him home.

Q. Was anyone with him?

A. No. He had a big suitcase, I suppose full of money, and I—it was a cold morning and I was plowing snow.

Q. Was your conversation outside?

A. Outdoors, where I told him when the tractor was running, I

told him I didn't want no part of this deal. And I kept telling him that; he kept coming back.

Q. Well, let's deal with that first time. After he left did Mr. Piccirillo come back to see you?

A. No, I never—he didn't come to me, for no reason. He's never contacted me.

Q. Have you ever talked to Mr. Piccirillo on the telephone about this working capital need of yours?

[TR. 15] A. I never did.

Q. Did Mr. Piccirillo ever come to the auction barn and talk to you about it?

A. No.

Q. Did you ask Mr. Daggett to drop by?

A. I never did. In fact, I wanted him to stay the hell away. He kept bothering me.

Q. Did you and Mr. Daggett have any discussion following this interview on the tractor when you were outside?

A. He came to my place one day with his rubber boots to go back in the field to look me up, but he didn't make it. The mud was too deep.

Q. Well, when you talked to Mr. Daggett, how many times did you talk to him at your place of business?

A. Well, he came one time after a sale, after we had had a sale. I can't tell you how many times, but he kept acoming for a loan.

Q. Well, how many times?

A. I wouldn't say. I couldn't keep track of how many times. Every time I'd look up he'd be coming.

* * *

[TR. 18] Q. When you talked to Mr. Santom in the bank who was present?

A. Nobody but my wife and I. That's the only time I was to the bank before this transaction, when we signed this paper.

Q. When Mr. Santom was with you and Mrs. Weaver at the bank did he explain the transaction to you?

A. He certainly did. He said it was working capital for Piccirillo, the same as he told me when he came to the trailer.

* * *

[TR. 19] Q. After Mr. Santom was at your trailer did you buy a

certificate of deposit at the Marine Bank?

A. No. this was a long time before that.

Q. How long before?

A. Well, I can't tell you, but I—it was a long time before I knew Mr. Daggett or Mr. Santom or anybody. Didn't have no idea I was going to use this money when I put the money in the Marine Bank, for anything but my business, is why I transferred the money from North East bank over here.

Q. But you did buy, probably in February of 1978 a fifty-thousand-dollar certificate?

[TR. 20] A. At the Marine Bank, the small bank.

Q. Right, and that was done at the North Corry branch?

A. The North Corry bank.

* * *

[TR. 28] Q. Would you say that what you were to reeive was two things, the hundred dollars a month plus fifty percent of the adjusted profit?

MR. CONNER: I'll object to the form of the question because the agreement speaks for itself, and I object to the form, but go ahead and answer the question.

DEPONENT: Tell me that question again.

Q. Were you to receive for your signature two things, a hundred dollars a month until your signature was removed, and fifty percent of what is called the adjusted net profit?

MR. CONNER: Same objection, but go ahead and answer the question.

A. I imagine that was what was in the agreement.

Q. Did Mr. Piccirillo leave a copy of that with you?

A. He did.

Q. When was this agreement executed?

A. There's no date on it. I wouldn't know, I**[TR. 29]** don't know when it was executed. He came in and throwed this paper down and he said he'd give me a little percentage of the business if I'd loan him some money through the bank, and I signed it.

Q. That was before March 17th, though, wasn't it?

A. That was before the time of this transaction.

Q. Did you ever tell the Marine Bank about that agreement?

A. No, they never knew about that agreement, that I know of. I

never told them. In fact, I never was to the bank from the time I loaned the money, put the money in the CD. I never was to that bank, I never was to the big bank until the time I signed this thing with this guy.

Q. Mr. Santom you're pointing to?

A. Yes sir.

* * *

[TR. 44] Q. After the loan closing did you stay in touch with Mr. Piccirillo?

A. No.

Q. Did you ever see him again?

A. Well, he—after the closing I think he brought us over some hamburg after that. He hadn't closed his place up yet.

Q. He stayed in business for some time after the closing, didn't he?

A. He stayed in business a week or two, you know.

[TR. 45] First thing I know that any of this money had been distributed anywheres else his checks started bouncing with me. I still got one for fourteen hundred dollars, and he gave me another for seventeen hundred. I got that money out of him, cash. That's the first time I—and then he explained to me that the bank had took all this money except ten thousand dollars and the IRS got six of it.

Q. Well, when he started bouncing checks, what were those checks for?

A. Livestock. I thought his check would be good after he had a loan through the bank of my money. I thought it would be good, so I allowed him to buy. He came himself and bought it each time.

Q. About how many times did he come and buy after the closing?

A. About a couple times is all.

Q. Two or three?

A. Yes, two or three that's all. He always had a buyer.

* * *

EXCERPTS FROM THE DEPOSITION OF ALICE F. WEAVER TAKEN AUGUST 10, 1979 AND FILED IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

[TR. 60] Q. Did you tell Mr. Santom about the agreement with Mr. Piccirillo?

A. No.

Q. Is there any reason why you didn't tell him about it?

A. No.

Q. You had the original of this in your **[TR. 61]** possession, isn't that correct?

A. That's right.

Q. But you didn't bring it with you to show it to the Marine bank at all?

A. No.

* * *

Daggett Exhibit #1

To: C. H. Bracken, Chairman and Chief Executive Officer
E. P. Junker, III, President

From: W. A. Hahn, Auditor - Fraud Control

Date: December 28, 1977

Subj: Columbus Packing Company Checking Account

1. Subject checking account, held at the Corry Office, has appeared on the overdraft report an excessive number of times in the past several months. Details of the account are as follows:

a. Name and Address of Account:
Columbus Packing Company
R. D. #1 Lottsville Road
Columbus, Pa.
b. Account Number: 1001-3029
c. Account Opened: May 7, 1976
d. Checks Returned: 17 (lifetime of account)
e. Number of times overdrawn: 189 (lifetime of account)
f. Current Balance: $9,345.03 Overdrawn
g. Currently Overdrawn Since: September 20, 1977

This account has been in an overdraft status almost constantly since April 1977 with an average overdrawn balance of approximately $9,000.

2. I have discussed the account on numerous occasions in the past with Corry management and was advised that an SBA loan was being processed which would resolve the overdraft problem. I further discussed the account with R. Santom this date for the first time since he assumed the position of Manager, Corry Area and was informed that he had discussed the account with R. Ross and T. Doolin and that ways and means to resolve the problem are currently being studied.

3. This memorandum is submitted for your information in view of the dollar amount and overdraft frequency of the account. I hold copies of the checking account statements from January through October 1977 for your review if desired.

W.A. HAHN

Copy to:
T. L. Doolin, Senior Vice President, Banking Division

R. N. Ross, Senior Vice President Northern/Southern Banking Regions
A. J. Cook, Vice President and Senior Auditor

Daggett Exhibit #2

COLUMBUS PACKING
BALANCE SHEET
OCTOBER 31, 1977

ASSETS

Curent assets:		
Accounts receivable		$ 12,009
Inventory		30,246
Prepaid insurance		1,000
Advance to employee		250
		43,505
Fixed assets: (note 1)		
Land	$ 30,000	
Buildings	73,000	
Equipment	33,911	
Trucks	11,583	
Leasehold improvement	2,344	
	150,838	
Reserve for depreciation	7,682	143,156
		$ 186,661

LIABILITIES & OWNER'S CAPITAL

Current liabilities:		
Bank overdraft		$ 15,711
Loan payable, bank		30,000
Accounts payable		21,197
Payroll taxes payable		8,897
Current portion of long-term debts		9,400
Loan - Individual		440
		85,645
Long-term debt: (note 3)		
Mortgage payable - Leonard Stockton	$ 70,000	
Mortgage payable - N. Burick	30,556	
Installment loans	13,689	
	114,245	

Less: portion payable within one shown as current liability	9,400	104,845
Accounts payable - prior owner		11,009
Owner's capital:		
Raymond Piccirillo, Capital		(14,838)
		$ 186,661

Exhibit A

Prepared from the records of the business without independent audit.

COLUMBUS PACKING
STATEMENT OF INCOME
FOR THE TEN MONTHS ENDED OCTOBER 31, 1977

	Total	Wholesale	Retail
Sales	$ 449,599	$ 423,044	$ 26,555
Less: Cost of goods sold	374,113	353,666	20,447
Gross Profit	75,486	69,378	6,108
Less expenses:			
Salaries	$ 49,587	$ 47,787	$ 1,800
Utilities	7,246	7,121	125
Office expense	498	498	
Interest	1,636	1,636	
Repairs & maintenance	1,835	1,735	100
Advertising	6,070	5,570	500
Supplies	927	767	160
Bad checks & bank charges	1,599	1,599	
Depreciation	3,700	3,600	100
Payroll taxes	3,391	3,241	150
Dues & subscriptions	110	110	
Delivery expense	3,016	2,716	300
Insurance	3,571	3,371	200
Property taxes	730	730	
Appraisal fees	384	384	
Miscellaneous	585	535	50
	84,885	81,400	3,485
Net income (loss)	$ (9,399)	$ (12,022)	$ 2,623

Exhibit B

( ) Denotes red figures.

Prepared from the records of the business without independent audit.

COLUMBUS PACKING
STATEMENT OF OWNER'S CAPITAL
FOR THE TEN MONTHS ENDED OCTOBER 31, 1977

Balance, January 1, 1977		$ 5,842
Less: Net loss for period ended October 31, 1977	$ 9,399	
Personal withdrawals	11,281	(20,680)
Balance, October 31, 1977		$ (14,838)

Exhibit C

( ) Denotes red figures.
Prepared from the records of the business without independent audit.

COLUMBUS PACKING
STATEMENT OF CHANGES IN FINANCIAL POSITION
FOR THE TEN MONTHS ENDED OCTOBER 31, 1977

Sources of working capital:		
Net income (loss)	$ (9,399)	
Add: Expenses not requiring an of working capital	3,700	$ (5,699)
Proceeds from installment loans		4,350
Reclassify prior owners accounts payable to long-term		13,200
		11,851
Uses of working capital:		
Leasehold improvements	$ 2,344	
Purchase of equipment	1,687	
Personal withdrawals	11,281	
Purchase of truck	5,360	
Payment on long-term debts	6,122	
Payments on long-term accounts payable	2,191	28,985
Increase (decrease) in working capital		$ (17,134)
Increase (decrease) in components of working capital		
Cash		$ (225)
Accounts receivable		5,775
Inventory		8,947
Prepaid insurance		(224)
Advances to employees		250
Bank overdraft		(15,711)
Loan payable, bank		(20,000)
Accounts payable		4,188
Payroll taxes payable		(4,894)
Current portion of long-term debt		200
Loan individuals		4,560
		$ (17,134)

Exhibit D

( ) Denotes red figures.

Prepared from the records of the business without independent audit.

NOTES TO FINANCIAL STATEMENTS

1. Significant Accounting Policies

   Inventories - are stated at the lower of cost or market, cost being determined on the first-in, first-out basis. Obsolete items are reduced to estimated net realizable values.

   Fixed assets - are carried at cost. Depreciation is calculated on the straight-line basis over the estimated useful lives of the assets.

2. Accounts payable - prior owner - were all assumed at the time the present owner purchased the business. Arrangements have been made with major creditors to repay the outstanding balances as cash is generated from profit during the forthcoming years.

3. Long-term debt:

   Mortgage payable, L. Stockton, 7¼ payable over fifteen years, secured by land, buildings and equipment.

   Mortgage payable, N. Burik, no interest, payable for first five years beginning in May, 1976. After five years monthly payments are to be made over a period of 7 years, and interest is to be computed at a rate of 7%.

   Installment loans, short term, truck, auto and personal loans mostly assumed from the prior owner, payable over a period of approximately three years.

Daggett Exhibit #3

Raymond A. Piccirillo Jr. 3/17/78
DBA Columbus Packing Company

$ 65,000.00	New Loan Proceeds
- 286.00	I/L Pay-off Marine
64,714.00	
- 10,312.32	Note - Pay-off Marine
54,401.68	
- 3,440.85	Note - Pay-off Marine
50,960.83	
- 20,999.44	Note - Pay-off Marine
29,961.39	
- 504.29	I/L Pay-off Judgement Consumer Loan (Associates)
29,457.10	
- 807.75	Judgement-Pay-off Nathaniel Arnot (hold check until settlement)
28,649.35	
- 5,146.75	Superior Meat Co. -Bal. in full
23,502.60	
- 3,474.00	George Hormel Co. -Bal. in full
20,028.60	
- 2,136.77	John Morrell Co. - Bal. in full
$ 17,891.83	
- 7,758.77	Deposit old A/C - For O.D.
$ 10,133.06	Deposit to new A/C - working capitol
	Take filing fees out of checking A/C.

The Memorandum and order of the United States District Court for the Western District of Pennsylvania granting the defendant's Motion for Summary Judgment is reproduced in the Petition for certiorari at pages A-25 through A-41.

The opinion of the Unied States Court of Appeals for the Third Circuit is reproduced in the Petition for Certiorari at pages A-1 through A-23.

The judgment of the United States Court of Appeals for the Third Circuit is reproduced in the Petition for Certiorari at page A-43.

The order of the United States Court of Appeals for the Third Circuit denying the petition for rehearing before the original panel is reproduced in the Petition for Certiorari at page A-44.

The order of the United States Court of Appeals for the Third Circuit denying the petition for rehearing in banc is reproduced in the Petition for Certiorari at page A-45.

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